IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

AS.No. 769 of 1997()

O.S.349/94 OF PRINCIPAL SUB COURT, NORTH PARAVUR

APPELLANT (LEGAL REPRESENTATIVES OF PLAINTIFF):

K.A.CHANDRASEKHARA MENON, CHARTERED ACCOUNTANT,
SON OF LATE GOPALA PILLAI, C-GARDENS,
THOTTAKKATTUKARA, N.H.ROAD, ALUVA VILLAGE, ALUVA TALUK,
PUN-683108

BY ADV. SRI.T.K.VENUGOPALAN

RESPONDENTS/DEFENDANTS:

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1. THE KERALA STATE HANDLOOM WEAVERS CO-OPERATIVE SOCIETY LIMITED, REP. BY ITS MANAGING DIRECTOR, P.B.NO.64, THIRUVANANTHAPURAM

2. DEPORT MANAGER, ALUVA DEPOT, NO.II OF HANTEX VIII/155, SREEKRISHNA SWAMY TEMPLE ROAD, ALUVA.

BY //

THIS APPEAL SUITS HAVING COME UP FOR ADMISSION ON 22/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

A.S .NO.769 OF 1997

Dated 22nd February 2007

J U D G M E N T

Plaintiff in O.S.349/1994 on the file of Principal Sub curt, North Paravur is the appellant. Respondents are defendants. Respondents were tenant of the building bearing door No.8/155 of Aluva Municipality. Appellant purchased the rights of building from the previous landlord Rosamma Jacob on 14/7/1992. At that time also respondents were the building tenants. R.C.P.6/91 was filed by earlier landlord to evict respondents was pending when property was purchased by appellant. Order of eviction granted by Rent Control Court was subsequently confirmed by this court in C.R.P whereunder time was granted to respondents to surrender vacant possession of the building. Suit was filed by appellant contending that respondents agreed to surrender the building, at the time when appellant purchased the building from original landlord and in violation of undertaking respondents continued possession of

building and therefore respondents are liable to pay damages. Rs.1,58,630/- was claimed as damages. Respondents resisted the claim contending that landlord tried to evict respondents when rent Control petition was pending and therefore appellant is not entitled to the damages sought for. Learned Munsiff on the evidence dismissed the suit. It is challenging that dismissal of suit this appeal is filed. In the appeal damages claimed was reduced to Rs.50,000/-.

2. Learned counsel appearing for appellant was heard. Arguments of learned counsel appearing for appellant was that this court in C.R.P filed by respondents against the order of eviction did not consider the question whether appellant is entitled to the damages and appellant was persuaded to purchase the building on the undertaking of respondent to surrender and as they did not surrender, appellants are entitled to the damages sought for and therefore dismissal of the suit is unsustainable and appellant is entitled to the decree.

3. On hearing learned counsel appearing for appellant, I do not find any merit in the appeal. Respondents are admittedly tenants of the assignor of appellant. Respondents could be evicted only by due

process of law. In fact, when appellant purchased the building rent control proceedings for eviction was pending. In such circumstances, without getting an order for eviction appellant could not have evicted the respondents. So also, appellant is not entitled to claim damages, so long as respondents are continuing in lawful possession of the building as tenants. Even though order of eviction was subsequently upheld by Rent Control Appellate Authority as well as revisional court, even when suit was filed respondents were continuing in possession and C.R.P was dismissed only thereafter. In such circumstances, learned Sub Judge rightly found that appellant is not entitled to the damages sought for. Appeal is bereft of bonafides.

Appeal is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

A.S.No.769 OF 1997

22nd February 2007

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